IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2561 of 2004
with
SPECIAL CIVIL APPLICATION NO.2572 OF 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JUBILEE HOTEL THROGH ADMINISTRATOR

Versus

RAMESHBHAI HAMIRBHAI RATHOD

Appearance:

1. Special Civil Application No. 2561 of 2004
   MR DIPAK R DAVE for Petitioner No. 1
   Mr.T.R.Mishra for Respondent
2. Special Civil Application No.2572/04
   Mr.Dipak R.Dave for petitioner
   Mr.S.C.Patel for respondent

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 04/05/2004

ORAL JUDGEMENT

This court passed an order on 27.02.04 whereby notice was issued for final disposal and pursuant to the notice Mr.T.R.Mishra has appeared for respondent in SCA No.2561/04 and Mr.S.C.Patel has appeared for respondent in SCA No.2572/04. Since the facts are are common and interconnected both the petitions are disposed of by this common judgment.

2. Both these petitions are preferred by the petitioner challenging the exparte judgment and award passed by the labour court whereby the reinstatement have been ordered with backwages. The petitioner herein had preferred application for restoration and for setting aside of the exparte award which ultimately came to be dismissed as per order dated 2.8.03. Under the circumstances, the petitioner has approached this court.

3. When this court considered the matter on 27.2.04 the order was passed, as under:

"1. Mr.Dave, learned counsel for the petitioner states that without prejudice to the rights and contentions of the petitioner in these petitions, the petitioner is ready to offer work to the concerned respondent workmen on daily wages basis and to pay atleast minimum wages and he further states that the petitioner is ready to pay the cost of Rs.5,000/-towards probable costs if the matter is considered for decision on merits by the labour court.

"2. In view of the above, notice for final disposal returnable on 17.3.04. By way of ad interim order it is directed that the proceedings of the execution of the award shall remain stayed on condition that:

(i) within a period of 15 days from today the petitioner offers employment to the concerned respondent-workmen as per the declaration made by the learned counsel referred to hereinabove. Subject to the aforesaid orders and without prejudice to the rights and contentions in these petitions; and

(ii) the amount of Rs.5,000/- towards probable costs to be deposited within a period of 15 days from today with this court.

Direct Service is permitted."

4. The learned counsel appearing for the petitioner submitted that accordingly the amount of costs has been deposited in both the matters and further submitted that the petitioner has also offered employment for in pursuant of the interim order passed by this court which was one of the conditions to operate the interim order.

5. in SCA No.2572/04 Mr.S.C.Patel for the concerned workman has declared before the court that if the amount of costs is ordered to be paid as compensation for default in the proceedings before the labour court and if the interim arrangement of offering employment is continued and the matter is remanded to the labour court for re-adjudication of the reference, the concerned workman is agreeable for such purpose.

6. On behalf of respondent workman in SCA No.2561/04 Mr.Mishra submitted that he is not in a position to give consent and therefore matter may be considered on merits.

7. If the impugned awards passed by the labour court are considered, it appears that the labour court has not considered the aspects as to whether the default can be compensated by awarding appropriate costs or not. In view of the reasons recorded by this court in in its judgment, dated 21.4.04 in SCA 9044/02, this court has taken view that while considering the matter for setting aside the exparte award, the court has to consider the matter as to whether the default is such which can be compensated by awarding appropriate costs or not. The said aspect is not considered and the labour court has mainly proceeded on the basis that after the intimation nobody has appeared on number of days on behalf of the employer and who has to look after the matter is an internal arrangement. Therefore, since the question regarding the delay or default to be compensated by appropriate costs is not considered it can be said that the labour court has committed error in exercise of its jurisdiction which would call for interference by this court in exercise of its powers under Article 227 of the Constitution of India. Further, if the matter is examined in light of the observations and reasons recorded by this court in the above referred decision, dated 21.4.04 in SCA No.9044/02 of this court, even if this court is inclined to consider the matter for remanding to the labour court on merits, the condition should be such that the defaulted party can not be allowed to take premium for its own default. Considering

the facts and circumstances, it appears that the awarding of costs of Rs.5,000/- to the respondent workman would be appropriate to compensate the default caused by the petitioner in the proceedings before the labour court. In addition to the above, in the present case, as observed earlier, even when the ad interim order was passed, one of the conditions provided was for offering employment to the concerned workman and since the work is offered, even if some time is taken for adjudication of the proceedings before the labour court after remand of the matter, the concerned workman will not be seriously prejudiced and since employment is offered in the present case, it may not be necessary for this court to direct the petitioner to deposit some amount towards backwages as directed in the SCA No.9044/02 Mr.Dave, Ld.Advocate has also declared before this court that such arrangement shall be continued till the reference is finally decided by the labour court after remand.

8. In view of the aforesaid, the impugned orders passed by the labour court below reference as well as application for restoration are quashed on condition that the petitioner pays an amount of Rs.5,000/- as compensatory costs and further continues to offer the employment to the concerned workman as per order, dated 27.2.04 passed by this court in these petitions until final disposal of reference after remand as stated hereinafter . It is further directed that the main reference shall stand restored to the file of the labour court and the labour court shall decide the same in accordance with law after giving opportunity of hearing to both sides and shall pass the orders as early as possible preferably within a period of six months from the date of receipt of writ of this court.

9. Both the petitions are allowed to the aforesaid extent and rule in each petition is made absolute accordingly.

10. Since the amount of Rs.5,000/-towards costs is already deposited by the petitioner pursuant to order, dated 27.2.2004, the concerned workman is at liberty to withdraw the said amount and the office shall make payment by A/C payee cheque.

4.5.04 (JAYANT PATEL,J)